

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

TIMIKO PAYTON,

Defendant.

CASE NO. 5:02-CR-00454-001

OPINION & ORDER
[Resolving Doc. No. [42](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In April 2003, this Court sentenced Defendant Timiko Payton to 168 months’ imprisonment for possessing cocaine base with intent to distribute it. Payton now moves for a reduction in that sentence, *see* [18 U.S.C. § 3582\(c\)\(2\)](#); [United States Sentencing Guidelines Manual \(USSG\) § 1B1.10 \(2011\)](#). He argues that the Sentencing Commission, pursuant to the Fair Sentencing Act of 2010, has retroactively reduced the guidelines sentences for cocaine-base offenses. [Doc. [42](#).] The United States opposes Payton’s motion. [Doc. [43](#).] Because Payton was not “sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered,” [18 U.S.C. § 3582\(c\)\(2\)](#), the Court **DENIES** Payton’s motion.

I. Background

In January 2003, Payton pleaded guilty to possession with intent distribute approximately 12.67 grams of cocaine-base. Under the 2002 version of [USSG § 2D1.1](#)—the version used at Payton’s first sentencing—Payton had a base offense level of 26. [Doc. [32](#), at 1.] But Payton qualified as a career offender. *Id.* Accordingly, [USSG § 4B1.1](#) (2002) set Payton’s offense level at 37. *Id.*

Case No. 5:02-CR-00454-001
Gwin, J.

The Court reduced Payton's offense level by three levels for acceptance of responsibility, and four more levels for his cooperation with the government. [Doc. [32](#), at 1.] Those reductions left Payton with a total offense level of 30, which, when combined with his criminal history category of VI, gave a guideline range of 168-210 months. [USSG 1B1.10](#) (2002). This Court sentenced Payton to 168 months' incarceration. [Doc. [32](#), at 2.]

In July 2009, Payton moved for a reduction of his sentence under [18 U.S.C. § 3582\(c\)\(2\)](#). [Doc. [30](#).] This Court denied that motion because Payton was a career offender and, therefore, his applicable guidelines range" had not changed even though the [§ 2D1.1](#) guideline had been amended. [Doc. [32](#), at 3.] The Court of Appeals affirmed. [Doc. [37](#), at 3.] Now, Payton again moves for a reduction in his sentence under [18 U.S.C. § 3582\(c\)\(2\)](#) and [§ 1B1.10](#).

II. Analysis

The Court has some authority under [18 U.S.C. § 3582](#) to reduce a previously imposed sentence. In particular, [§ 3582\(c\)\(2\)](#) provides that

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . the court may reduce the term of imprisonment . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

[18 U.S.C. § 3582\(c\)\(2\)](#). Accordingly, [§ 3582\(c\)\(2\)](#) authorizes the Court to reduce Payton's sentence only if (1) that sentence is "based on a sentencing range that has subsequently been lowered" and (2) "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.*

The Court lacks authority under [§ 3582\(c\)\(2\)](#) to grant Payton's requested reduction because his sentence was not "*based on* a sentencing range that has subsequently been lowered." *Id.*

Case No. 5:02-CR-00454-001
Gwin, J.

(emphasis added). Although Congress retroactively lowered the base offense levels for cocaine-base offenses after Payton was first sentenced, *compare* [USSG § 2D1.1 \(2002\)](#) with [USSG § 2D1.1 \(2011\)](#), the career offender guidelines ranges have not been lowered.

And Payton's sentence was based on the career offender guideline, not the base offense level in [§ 2D1.1](#). Payton is different from the defendant in [United States v. Jackson](#), who was a career offender, but who received a below guidelines sentence that was based on the base offense level set out in [§ 2D1.1](#). See [678 F.3D 442, 444](#) (6th Cir. 2012). Unlike the district court in [Jackson](#), this Court originally sentenced Payton within the career offender range, and so the cocaine-base guidelines played no role in determining Payton's original sentence. Thus, Payton was not "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered," [18 U.S.C. § 3582\(c\)\(2\)](#), and the Court cannot oblige Payton's requested reduction.

III. Conclusion

For these reasons, the Court **DENIES** Payton's motion for a sentencing reduction.

IT IS SO ORDERED.

Dated: August 31, 2012

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE